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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 647.

S. H. DUNSCOMB, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED FEBRUARY 3, 1877.

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THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY
vs.
S. H. DUNSCOMB.

Transcript of record from Supreme Court of Tennessee, at Jackson.

J. B. Heiskell, for the State.
J. A. Taylor, for Shelby County.
Estes & Jackson, for Dunscomb.

UNITED STATES OF AMERICA, *ss.*

a The President of the United States to the Honorable the Judges of the Supreme Court of the State of Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court of Tennessee, before you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of Tennessee and the County of Shelby and S. H. Dunscomb, wherein was drawn in question the validity of a statute of the State of Tennessee, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, a manifest error hath happened, to the great damage of the said Samuel H. Dunscomb, as by his claim appears: We, being willing that the error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be thereon given, that then, under

b your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

H. E. ANDREWS,
Clerk U. S. Circ't Court, W. D. T.

(Endorsed:) S. H. Dunscomb, plff. in error, vs. The State of Tennessee and the County of Shelby, defts. in error. Writ of error. Filed 29th Nov., 1876. Jno. H. Freeman, clk.

1 THE STATE OF TENNESSEE.

Pleas before the Supreme Court of the State of Tennessee for the Western Division thereof, at Jackson, on the fourth Monday of September, A. D. 1876.

Present, Hon. James W. Deaderick, chief justice; Peter Turney, Robert McFarland, Thomas J. Freeman, and John L. T. Sneed, judges.

Be it remembered that heretofore, to wit, on the 5th day of April, A. D. 1873, the following transcript of a record was filed in the office of the clerk of the supreme court of said state, at Jackson, to wit:

STATE OF TENNESSEE AND SHELBY COUNTY *vs.* S. H. DUNSCOMB ET AL. } No. 213. Shelby Chancery Docket.

2 STATE OF TENNESSEE.

Transcript from the Second Chancery Court of Shelby County.

Hon. Saml. P. Walker, chancellor presiding, in case of State of Tennessee and County of Shelby vs. S. H. Dunscomb and others, in words and figures as follows:

Cost Bond.

We, the County of Shelby, and W. W. McDowell, surety, and S. H. Dunscomb, and H. E. Jackson, surety, acknowledge ourselves indebted to the State of Tennessee in the sum of two hundred and fifty dollars.

To be void if the said W. W. McDowell, surety for the
3 county, and H. E. Jackson, surety for S. H. Dunscomb, complainant and defendant, in a case made upon an agreed state of facts to be determined by the chancellor, shall pay all such costs as may be awarded against them by the court in its decree and orders in said bill. This 16 day of January, 1873.

COUNTY OF SHEEBY,
By W. W. McDOWELL.
W. W. McDOWELL,
Surety for Co.
S. H. DUNSCOMB,
By ESTIS & JACKSON, *Atty.*
H. E. JACKSON,
Surety for Dunscomb.

Bill.

STATE OF TENNESSEE AND COUNTY OF SHELBY *vs.* S. H. DUNSCOMB. 741 N. R. D. } Submitted on agreed state of facts.

4 It is agreed that the Hernando Insurance Company was doing business in the city of Memphis, was duly organized

under its charter granted by the Legislature of Tennessee on the 20th March, 1858.

That its capital stock, regularly subscribed, amounts to the sum of $150,000.00, divided into 1500 shares of $100.00 each.

That the above-named defendant, S. H. Dunscomb, was, throughout the year 1872, the owner of 90 shares of said capital stock, of the value of $7,200.00.

That the State of Tennessee and the County of Shelby, claiming the right under existing revenue laws to tax said stock, caused said 90 shares thereof to be assessed against the said Dunscomb for 1872, at the value aforesaid; the state imposing a tax
5 thereon of 40 cents on the $100 of said valuation, making a state tax of $28.80, and the county of Shelby a tax of $1.20 on the $100 of valuation, making a county tax of $86.40, which the state and county now demand payment of from said Dunscomb.

The legality of said taxes is disputed. The said Dunscomb denies the right of the state and county to assess said stock for taxation as aforesaid. He claims that under the 10th section of the Hernando Ins. Company's charter, as follows, viz: "*That said company shall pay to the state an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other*
6 *taxes*," said shares of stock are exempt from taxation, except the tax of one-half of one per cent. on each share of the capital stock subscribed, (which it is admitted said Hernando Ins. Co. has regularly paid to the State of Tennessee,) and that all laws imposing other or additional taxes on said shares of capital stock, impair the obligation of the contract contained in the charter of the Hernando Ins. Co., and are in violation of the Constitution of the United States of America, and therefore void. It is agreed that the charter of said Hernando Ins. Co. and revenue and other laws, so far as applicable to the subject, shall be treated as a part of this case, and may be read on the trial from any book or document con-
7 taining the same, as if they were copied herein.

It is agreed that the 2d Chancery Court of Shelby County may try this case and shall decide whether the state and County of Shelby have the right to impose said taxes on said stock, in addition to the aforesaid one-half of one per cent. on each share of the capital stock paid to the state under the aforesaid 10th section of the company's charter.

From the decision of said court either party may appeal, on giving bond for costs. It is agreed that if the final decision shall be in favor of the state and county aforesaid, the judgment shall be rendered against the said S. H. Dunscomb for the aforesaid
8 sum of $28.80 and $86.40 for the state and county respectively, with interest thereon from and after the 1st January, 1873.

On the other hand, if the final decision should be in favor of defendant Dunscomb, then the judgment shall be, that the said taxes

are illegally assessed; that said shares of stock are exempt from all other taxation than the one-half of one per cent. on each share of stock subscribed, as provided in the aforesaid 10th section of said charter, and that the collection of the aforesaid taxes be enjoined, and for such other appropriate decree as the court may deem proper to render, in order to protect said Dunscomb or his assigns
9 from taxation on said stock. Pending the final decision of this case, the state and county agree to suspend the collection of said taxes from the said Dunscomb, and like taxes assessed against other stockholders in said Hernando Ins. Co.

The costs of the suit are to abide the final result.

S. H. DUNSCOMB,
By ESTIS & JACKSON, *his Attys.*
W. W. McDOWELL,
For State and County.

STATE OF TENNESSEE,
COUNTY OF SHELBY.

Personally appeared before me H. E. Jackson, atty. for above defendant, and makes oath that the questions and controversy
10 involved in the above case are real, and that this proceeding is had to determine the rights of the parties.

H. E. JACKSON.

Subs. and sworn to before me, Jan. 16, '73,
CRABTREE BELCHER, *D. C. & M.*

Decree.

On the 27 day of March, 1873, the following proceedings were had and appear of record in minute book, p. —, viz:

STATE OF TENNESSEE AND COUNTY OF SHELBY
741 *vs.* N. R. D.
S. H. DUNSCOMB.

This cause was heard on this 27 day of March, 1873, upon the agreed case and record, and the court being satisfied there-
11 from that the State of Tennessee and the County of Shelby are not entitled to enforce the collection of the state and county taxes therein mentioned against the said Dunscomb upon the shares of capital stock in the Hernando Insurance Company, and that the shares of said capital stock of said company are exempt and not liable to said taxes by the terms of said charter.

It is therefore ordered and decreed by the court, (in pursuance of the terms of said agreed case,) that said taxes are illegally assessed; that said shares of stock are exempt from all other taxation than the one-half of one per cent. on each share of stock sub-
12 scribed, as provided in the 10th section of the charter, and that the collection of said taxes be, and the same is hereby, perpetually enjoined, and that the costs of this cause be certified for payment as prescribed by law.

From this decree the State of Tennessee and the County of Shelby pray an appeal to the next term of the Supreme Court of Tennessee, to be held at Jackson on 1st Monday in April, 1873, which is granted by the court.

Appeal Bond.

We, Shelby County, and W. W. McDowell, surety, acknowledge ourselves indebted to S. H. Dunscomb and others in the sum
13 of two hundred and fifty dollars, to be void if the said State of Tennessee and County of Shelby, who have prayed for and obtained an appeal from a decree of the Second Chancery Court of Shelby County, in a cause in which State of Tennessee and County of Shelby are complainants, and S. H. Dunscomb and others are defendants, to the next term of the Supreme Court of Tennessee for the District of West Tennessee, to be held at Jackson, Madison county, on the first Monday in April next, shall pay and satisfy all such costs as shall be awarded against county by said supreme court.

COUNTY OF SHELBY. [SEAL.]
W. W. McDOWELL. [SEAL.]

(Endorsed:) Filed 2 day of Apr., 1873. M. D. L. Stewart, C. & M.

14 And at the September term, A. D. 1876, of the Supreme Court of Tennessee for the western division thereof, at Jackson, the following opinion was delivered:

[Here follows opinion and dissenting opinion (MS. record, pp. 14–88).—See record in No. 646, Farrington vs. The State, &c., pp. 4–18.]

And on Monday, November 20th, one of the days of the September term, 1876, of said Supreme Court, the following decree was pronounced in this cause, to wit:

THE STATE OF TENNESSEE AND THE COUNTY of Shelby
vs.
S. H. DUNSCOMB AND THE HERNANDO INSURANCE Company of Memphis.
No. 213.
Shelby Chy. Docket.

89 This cause was heard upon the transcript of the record from the Second Chancery Court of Shelby county, and after argument by counsel, and full consideration by the court, it appearing that there is manifest error therein, it is therefore ordered, adjudged, and decreed by the court that the decree of said chancery court be reversed, vacated, and annulled.

And upon consideration of the claim made by defendant S. H. Dunscomb, that the revenue act of the Tennessee legislature of 1869–70, chapter 81, section 1, providing "that all shares of stock in

any bank, corporation, or company, now or hereafter incorporated by or in pursuance to any law of this state or any other state, and all public bonds or stocks, except United States bonds, which by
90 the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation," under and by virtue of which act said defendant S. H. Duncomb's shares of stock in the Hernando Insurance Company of Memphis were assessed for state and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Hernando Insurance Company of Memphis, and violated section 10, art. 1, of the Constitution of the United States, this court doth adjudge and decide this point and claim against said defendant, on the ground that the shares of stock in the said company are not the property or thing exempted by the charter of said
91 company, but other and different, and so not within the protection of the said charter and of said section of the Constitution of the United States.

It is therefore ordered, adjudged, and decreed by the court that the sums of $28.80 state tax and $86.40 county tax were properly assessed by the State of Tennessee and the County of Shelby upon the shares of stock of the defendant, S. H. Dunscomb, in the Hernando Insurance Company of Memphis, as state and county taxes for the year 1872, and, therefore, that the State of Tennessee do recover of S. H. Dunscomb, and of said Hernando Insurance Company as his surety, the said sum of $28.80 state tax, and that the County of Shelby do also recover of said Dunscomb, and of said insurance company as his surety, the said sum of $86.40 county
92 tax, for all which execution may issue, and that said sums bear interest at the rate of six per cent. per annum from the first day of January, 1873, until paid.

It is further ordered, adjudged, and decreed that the State of Tennessee and County of Shelby recover of said S. H. Dunscomb, and of his surety, said Hernando Insurance Company, the costs of this cause in this court and the court below, for which execution may issue.

Petition for Writ of Error.

To the Hon. Jas. W. Deaderick, Chief Justice of the Supreme Court of the State of Tennessee:

The petition of S. H. Dunscomb vs. the State of Tennessee
93 and the County of Shelby in said state.

Petitioner respectfully represents unto your honor that lately in the Supreme Court of the State of Tennessee there was pending a cause wherein the State of Tennessee and the County of Shelby, in said state, were complainants, and petitioner was defendant, in which a final decree was rendered in said supreme court, at the September term, 1876, against the defendant, (petitioner,) in favor of the respective complainants in said cause.

Petitioner further represents unto your honor, that in the said cause and proceeding there was drawn in question one of the matters described in the 25th section of the judiciary act of the United States and in the 709 section of the Revised Statutes of the
94 United States, viz: the construction of section 10 of article I. of the Constitution of the United States, and under which the petitioner (defendant in said suit) claimed a right, immunity, and exemption from further taxation than ½ of one per cent. on his shares of the capital stock of the "Hernando Insurance Company," (a corporation chartered by the legislature of the State of Tennessee,) by virtue of the following clause in the charter of said company, viz: "Said company shall pay to the state an annual tax of ½ of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes." After the grant of this charter, the State Tennessee and the County of Shelby, in said state, respectively assessed and imposed further and additional
95 taxes on petitioner's shares in the capital stock in said Hernando Insurance Company, as appears from the record in said suit, and petitioner in said suit specially set up and claimed immunity and exemption therefrom, and insisted that such additional taxation impaired the obligation of the contract made by said charter and violated the above-mentioned section of the Constitution of the United States: But the decision of the said court was adverse to the right, immunity, and exemption thus specially set up and claimed by petitioner, and it so appears of record, the said decree reciting and holding as follows: "The defendant claims that the revenue act of the Tennessee legislature of 1869 and '70, ch. 81, sec. 1, providing, &c.," under and by virtue of which
96 act defendant's shares of sfock in the Hernando Insurance Company were assessed for state and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Hernando Insurance Company, and violated section 10 of article I. of the Constitution of the United States, this court doth adjudge and decide this point and claim against the defendant, on the ground that the shares of stock in said Hernando Insurance Company are not the property or thing exempted by the charter of said company, but other and different, and so not within the prohibition of the said charter and of said section of the Constitution of the United States."

97 Petitioner therefore prays your honor to endorse an allowance of a writ of error, that the proper citation be signed by your honor, to the end that the record and proceedings in said cause may be removed into the Supreme Court of the United States, to the end that said error may be corrected, and petitioner, as in duty bound, will ever pray.

HARRIS, McKISSICK & TURLEY,
ESTIS, JACKSON & ELLETT,
Solicitors for S. H. Dunscomb.

STATE OF TENNESSEE, AT JACKSON, *Nov.*, 1876.

The writ of error prayed for in the foregoing petition is granted and allowed, in pursuance of law in such cases. The plaintiff in error will execute a good bond in the sum of one thousand dollars, to be approved by me.

JAS. W. DEADERICK, *C. J.*

98 (Endorsed:) Filed Nov. 29th, 1876. Jno. H. Freeman, clk., by S. D. Hays, D. C.

Bond.

Supreme Court of the United States.

STATE OF TENNESSEE AND COUNTY OF SHELBY
vs.
S. H. DUNSCOMB.

Know all men by these presents, that we, Samuel H. Dunscomb, as principal, and Napoleon Hill and William N. Brown, as sureties, are held and firmly bound unto the State of Tennessee and the County of Shelby in the sum of one thousand dollars, to be paid to the said State of Tennessee and County of Shelby, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, execu-
99 tors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 25th November, 1876.

Whereas, the above-named S. H. Dunscomb hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the Supreme Court of the State of Tennessee, at its September term, 1876, at Jackson: Now, therefore, the condition of this obligation is such, that if the above-bound and named Samuel H. Dunscomb shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

SAMUEL H. DUNSCOMB. [SEAL.]
NAPOLEON HILL. [SEAL.]
WILLIAM N. BROWN. [SEAL.]

100 I, Horace E. Andrews, clerk of the Circuit Court of the United States for the Western District of Tennessee, do hereby certify that the above bond is good and sufficient for the amount of the penalty.

Nov. 25, 1876. H. E. ANDREWS, *Clerk.*

Approved Nov. 29th, 1876.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov'r 29th, 1876. Jno. H. Freeman, cl'k, by S. D. Hays, D. C.

Citation.

THE UNITED STATES OF AMERICA

To the State of Tennessee and the County of Shelby, in said state, greeting:

You are hereby cited and admonished to be and appear at
101 a Supreme Court of the United States, to be holden at Washington, on second Monday in October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Tennessee, at Jackson, wherein S. H. Dunscomb is plaintiff in error and you are defendants in error, and show cause, if any there be, why the decree rendered against said plaintiff in error in the writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon Jas. W. Deaderick, chief justice of the Supreme Court of Tennessee, this 28th day of November, 1876.

JAS. W. DEADERICK, *C. J.*

102 *Summons* of the above citation acknowledged for the State of Tennessee, and for the County of Shelby, in said state.

Nov. —, 1876. J. B. HEISKELL, *Atty. Genl.*
COUNTY OF SHELBY,
By JULIUS A. TAYLOR, *Atty.*

THE STATE OF TENNESSEE.

I, John H. Freeman, clerk of the supreme court of said state for the western division, at Jackson, do hereby certify that the foregoing is a full, true, and perfect transcript of the record in the case of the State of Tennessee and the County of Shelby, against S. H. Dunscomb, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and
103 affixed the seal of the court, at office in the city of Jackson, this the 15th day of January, A. D. 1877, and of the independence of the United States the 101st year.

[SEAL.] JOHN H. FREEMAN, *Clerk.*

(Endorsed on cover:) Tennessee Sup. Court. No. 647. S. H. Dunscomb, plff. in error, vs. The State of Tennessee and the County of Shelby. Filed 3rd February, 1877.